IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4723 OF 1993.

Maruti Ganpat Khadtale... ..... Petitioner
V/s
The Commissioner, Rly. Protection Force, Bombay & Ors.. Respondents.

Mr.M.S.Karnik, Adv. For the petitioner.

None for the respondents.

Mr.S.M.Ghorwadkar with Rohit Pawaskar for respondents 4 to 6.

CORAM: V.G. PALSHIKAR, Ag. C.J.
AND
D.B. BHOSALE, J.

17th Nov., 2005.

PC:

None appears for respondents inspite of service.

The petitioner was employed with Railway Protection Force for more than 23 years. He has worked for all that period. Thereafter he suffered mental illness due to which he was absent. His continuous absence resulted in departmental enquiry culminating in his removal from service for the misconduct on account of remaining absent. This order of removal is challenged in this petition.

2. The submission on behalf of the petitioner is that his absence was due to reasons beyond his control. He has been removed from service for misconduct.

Reliance was placed on a division bench judgment of this Court in Writ Petition No.1686 of 1993 decided on 23.10.93 in which the circumstances were very akin and similar to the circumstances in the present case. This Court relying on the judgment of the Supreme Court reported in the case of ***M/s.MSCO Pvt. Ltd.*** V. ***Union of India and Ors.***, AIR 1985 SC 76 observed that taking into consideration the service of more than 20 years and the nature of ailment punishment of removal from service was disproportionate and therefore the order or removal from service was converted into order of compulsory retirement.

3. The submission is. following the ratio of this case, in the instant case also the order is liable to be so converted. This petition was filed in the year 1997 and even today there is no reply. The averments made in the petition are therefore liable to be accepted there being no rebuttal. So accepted the claim of the petitioner can be granted in view of the judgment of the Supreme Court as also of this Court cited above. In the result therefore the petition succeeds and is allowed. The impugned order dated 7.2.83 is modified and the petitioner shall stand compulsorily retired from service instead of termination or removal or dismissal. As a consequence thereof he shall be entitled to consequential benefits as permissible to him under the relevant rules. Petition accordingly stands disposed of.